

CITY OF MORGAN HILL  
REGULAR AND SPECIAL REDEVELOPMENT AGENCY AND  
SPECIAL CITY COUNCIL MEETING  
MINUTES - MAY 24, 2000

Chairman Kennedy called the Special and Regular Meeting to order at 6:40 p.m.

**ROLL CALL**

Present: Agency/Council Members Chang, Cook, Sellers, Tate  
Late: Chairman/Mayor Kennedy (arrived at 6:45 p.m.)

**DECLARATION OF POSTING OF AGENDA**

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**OTHER BUSINESS:**

**1. APPOINTMENT TO THE LIBRARY COMMISSION**

Recreation Manager Spier presented the staff report and informed the City Council that applicant Kathleen Leder Goelkel could not attend the meeting this evening based on a conflict with her new place of employment. However, Ms. Goelkel forwarded the City Council an e-mail addressing her interest on serving the City and the community as a Library Commission.

Chairman/Mayor Kennedy entered and was seated.

The City Council interviewed Mary Ellen Salzano to fill a vacancy on the Library Commission.

Sellers felt that if there were significantly qualified members, that the Council has the ability to appoint/increase additional members in the commission.

Siege responded if not set forth in the Code, the Council can either increase or decreased the members to a commission. Or amend the ordinance.

**Action:** *The City Council, by ballot vote, selected a candidate to fill a library vacancy.*

**Action:** *On a motion by Council Member and seconded by Council Member, the City Council unanimously (5-0) **approved** the Mayor's appointment of Kathleen Leder Goelkel or Mary Ellen Salzano to fill a vacancy with a term ending April 1, 2001.*

Council Member Sellers recommended that consideration be given to appointing additional Board or Commission members when there are a number of qualified candidates to select from.

Chairman/Mayor Kennedy called the regular and special meeting to order at 7:07 p.m.

## **SILENT INVOCATION**

## **PLEDGE OF ALLEGIANCE**

At the invitation of Chairman/Mayor Kennedy, Mary Ellen Salzano, newly appointed Library Commissioner, led the Pledge of Allegiance.

## **CERTIFICATE OF APPRECIATION**

Mayor Kennedy presented Joanna Schirle with a Certificate of Appreciation for her service to the community as a *Parks & Recreation Commissioner*.

## **PUBLIC COMMENT**

Chairman/Mayor Kennedy opened the floor to public comment.

Evelyn Kobayashi informed the City Council that she would be submitted a 40 page petition containing 802 signatures from individuals who are concerned with the direction of the plan for the community center. Many individuals feel that it would be appropriate to stop and review the plan versus proceeding with a plan that may not meet the expectation of the community for a quality and longevity community center. She requested that consideration be given to the questions raised regarding safety of children and others, traffic problems around and within the site, the water feature and safety, and overcrowding of the site. She stated that the biggest concern is that the plan should be oriented toward community use, including adequate recreational facilities, especially for the community's youth. Also of concern is the lack of a maintenance fund for a water feature.

No other comments were offered.

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

Agency Member Cook requested that agenda item 3 be removed from the Consent Calendar,

**Action:**        *On a motion by Agency Member Tate and seconded by Vice-chairman Sellers, the Agency Commission unanimously (5-0) approved Consent Calendar item 2 as follows:*

#### **2.        MARCH 2000 FINANCE AND INVESTMENT REPORT**

**Action:** *Accepted and filed the report.*

#### **3.        LEASE EXTENSION WITH MACSA FOR THE EL TORO YOUTH CENTER**

Agency Member Cook indicated that this item was originally pulled from the last meeting due to a question of utility payments. She noted that the utility payments will be provided by the agency since

it is considered an Agency owned facility. It was her belief that Agency funds could not be used for operation and maintenance and felt that payment of utilities falls under a part of this equation.

Director of Business Assistance and Housing Services Toy stated that payment of utilities is an eligible expenses to pick up as an on-going basis as it is part of the leave term with an entity and that it is not an Agency operation and maintenance. He informed the Agency Commission that he spoke with legal counsel who indicated that this is an acceptable activity and use of funds.

**Action:**        *On a motion by Agency Member Tate and seconded by Vice-chairman Sellers, the Agency Commission unanimously (5-0): 1) **Approved** the Extension of the Lease with the El Toro Youth Center to 55 years, and 2) **Authorized** Interim Executive Director to Execute Final Lease and Make Modifications as Needed.*

## **OTHER BUSINESS:**

### **4.        LIBRARY SITE SELECTION STUDY**

Business Assistance and Housing Manager Maskell presented the staff report. She indicated that Frants Albert and Judith Strong, consultants, were present to answer any questions that the Agency Commission may have. She indicated that two public hearings will be conducted as part of the process.

Agency Member Sellers asked if the architectural firm that is being recommended and asked if there were any expectations that they may be involved in the design of the library. He noted that one of the reasons that the committee gave for selecting this organization is their expertise in building a library. He asked if this would give the firm an added credence for being the firm selected to build the library.

Agency Member Tate indicated that all three firms interviewed for the site selection process expressed an interest in the design in the library. He indicated that good applicants were received. He indicated that Mr. Albert featured one project that he had completed in Venetia. On evaluation, the individuals in Venetia indicated that he understating his involvement and that there was an endorsement of the project and the good work that he had down to shape the project.

Chairman Kennedy noted that the City is considering multiple sites. He asked Mr. Albert what process would be used in selecting the right site?

Mr. Albert indicated that his firm would be working with a working group to develop a set of criteria and a method for evaluation. Each site would be compared to the criteria. A ranking will be achieved if the process is conducted in a meaningful way and give a clear indication as to which is the best site. The evaluation process should be an objective result and that it will not be based on an emotional or one that cannot stand scrutiny. He said that the process will be one that there will be a review of all sites. Some sites will become lessor candidates early on. If there is to be any follow up work, it will be concentrated on the few sites remaining in the running.

Chairman Kennedy asked about the deliverables that can be expected? Mr. Albert indicated that a

description of the basis for the methodology and criteria will be presented. Also to be included is the suitability of each site for a library use. A test will be given to each site to see if they work in terms of public access, proper image and serve of the building, and how the parking would work.

Chairman Kennedy opened the floor to public comment. No comments were offered.

**Action:**        *On a motion by Agency Member Chang and seconded by Vice-chairman Sellers, the Agency Commission unanimously (5-0) **Authorized** the Interim Executive Director to Prepare, Enter into and Execute a Contract with Frants Albert Associates for the Preparation of a Site Selection Study of the Five Proposed Sites for a New or Expanded Library, in an Amount Not to Exceed \$50,000.*

## ***City Council & Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Commission unanimously (5-0) approved Consent Calendar Items 5-7 as follows:*

5.        **JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MARCH 29, 2000**

**Action:** *Approved the Minutes as written.*

6.        **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MAY 3, 2000**

**Action:** *Approved the Minutes as written.*

7.        **JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MAY 10, 2000**

**Action:** *Approved the Minutes as written.*

### **OTHER BUSINESS:**

8.        **2000/01 BUDGET**

Interim Executive Director/City Manager Tewes presented the staff report. He indicated that Morgan Hill is in a strong financial condition and that staff has included in the proposed 2000/2001 the items contained in last year's financial plan with some additional enhancements.

Finance Director Dilles presented highlights of the 2000/01 budget as an introduction and that staff would provide greater detail at a subsequent budget workshop as well as a public comment to allow the community to comment on the budget at future dates. He indicated that the City Council could designate use of the 50% general fund reserve.

Council Member Sellers inquired if it is still appropriate to have a 48-50% general fund reserve and whether it continues to be a sound policy issue.

Council Member Cook referred to page 6 of the report and noted that the expenditures and revenues are getting closer together as the city goes out. Therefore, there will not be that much of a surplus that will continue as was done in the past.

Director of Public Works Ashcraft presented the City Council with a proposed five year Capital Improvement Program (CIP). He highlighted projects and identified how the Redevelopment Agency funding has helped to generate additional funds for the CIP. He indicated that the Planning Commission and Parks and Recreation had an opportunity to review the CIP and that their recommendations will be forwarded to the City Council/Agency regarding priority setting.

Agency/Council Member Cook stated that she was astonished that there are a lot of public facilities projects contained in the CIP and that the priorities have been set without Council discussion.

Mr. Tewes said that the CIP projects reflect staff recommendation based on some Council guidance. He said that some projects have to be done earlier in the process and that staff was directed to assemble the lands needed for all of the projects as early as possible. He noted that expenditures for the projects are land acquisitions in the early years.

Chairman/Mayor Kennedy stated his support of the concept of early land acquisitions due to the demand for land and the increasing costs. He concurred with Council Member Cook that the RDA will be discussing priorities of its projects.

Mr. Tewes clarified that the priorities before the City Council are for projects for capital projects within the Redevelopment Plan and that these do not constitute all of the uses of monies established by the Redevelopment Plan amendment. He noted that there are housing programs and economic development program that are not encompassed by the CIP being presented this evening. He noted that there are other additional priorities as well. He stated that the Agency will be prioritizing the projects in the context of the budget (within the next 45-days).

Agency/Council Member Chang indicated that the Agency/Council discussed the projects identified by staff (e.g., senior center, library site, youth soccer/sports facility, aquatic center). She agreed that the Agency/Council should identify its priority but that these projects were discussed by the Council/Agency and thus staff's belief that these were the Agency/Council's top priority. She agreed that these priorities need to be discussed.

Agency/Council Member Sellers agreed that priorities need to be established in a broader sense but cautioned about being rigid and not be able to proceed with other projects based on the identified priorities based on items beyond the Agency's/Council's control or that opportunities that become available that were not anticipated.

Mr. Tewes requested Agency/Council give staff direction on the schedule for a workshop and public hearing.

Agency/Council Member Chang inquired if the budget included \$1 million for a park trust fund. Mr. Dilles informed the Agency/Council that the park maintenance fund is found on page 36 of the budget, fund 302, and shows a balance of approximately \$2.3 million.

Mr. Tewes informed the Agency/Council that there are two capital funds to be used for park purposes: AB 1600 impact fees and non AB 1600 fees which is an amount that comes through the process where projects may contribute double the park fee. These fees go into a different fund.

Chairman/Mayor Kennedy requested that staff identify these amount.

Mayor Kennedy inquired if Friday, June 2, 8 a.m. to 12 p.m. is a good day to conduct a budget work session? The Agency/Council indicated that this was a good date and time.

Agency/Council Member Tate recommended that the Parks & Recreation and Planning Commission representative be invited to attend the workshop to address their recommendation.

Chairman/Mayor Kennedy suggested that the Commissions select a representative to be sent to the study session.

Agency/Council Member Tate requested that information technology be enhanced in the budget and that the city establish itself as a leadership in terms of information technology, especially the City's web site services. He requested that this be highlighted in the budget.

Chairman/Mayor Kennedy opened the floor to public comment.

Ava Geddes, Board Member, Town Cats, felt that it was important that the City implement an effective and humane animal control plan. She recommended that the city use San Jose's spay and neuter program as a model consisting of a low cost spay and neuter surgery Voucher Program. She requested that Morgan Hill budget \$10,000 toward this voucher program and that it be added to the Animal Control's annual budget. She recommended that residents be asked to pay \$10 toward the surgery service in order to stretch the allocated \$10,000 budget.

Mayor Kennedy requested that staff take Ms. Geddes' request into account as part of the budget workshop as he felt that this was an excellent suggestion of a good public/private partnership.

Agency/Council Chang indicated that she would be out of town on June 21. However, she would review her schedule to see if she can be back in time to attend the June 21 meeting.

Mr. Tewes noted that June 21 is the recommended public hearing date and that there is a week to be able to return with further information analysis.

Agency/Council Member Cook opposed setting Agency/Council meetings around Agency/Council member's schedule.

**Action:**        *On a motion by Agency/Council Member Sellers and seconded by Agency/Council Member Tate, the City unanimously (5-0) 1) **Reviewed** the Interim City*

*Manager's/Interim Executive Director Proposed 2000/01 Budget and Capital Improvement Program, 2) Set June 2, 2000 8:00 a.m. to 12:00 p.m. as a Budget Workshop, and 3) Set June 21, 2000 as a Public Hearing for Adoption of the Budget.*

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Pro Tempore Tate requested that Item 11 be removed from the Consent Calendar.

**Action:** *On a motion by Council Member Cook and seconded by Council Member Sellers, the City Council unanimously (5-0) approved Consent Calendar Items 9, 10 and 12-15 as follows:*

**9. APRIL 2000 FINANCE AND INVESTMENT REPORT**

**Action:** *Accepted and filed report.*

**10. RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) QUARTERLY REPORT NO. 2**

**Action:** *Accepted the Report by Minute Action.*

**12. REJECTION OF BIDS FOR POLYBUTYLENE WATER SERVICE REPLACEMENT PROJECT, PHASE II**

**Action:** *Reject All Bids Received on May 2, 2000 for the Replacement of Polybutylene Water Services and Authorize Staff to Rebid the Project.*

**13. AWARD BID AND AUTHORIZE THE PURCHASE OF EQUIPMENT AND LABOR REQUIRED TO BUILD UP POLICE PATROL VEHICLES**

**Action:** *1) Awarded the Bid in the Amount of \$32,876 for the Build Up Police Patrol Vehicles, and 2) Authorized the Interim City Manager to Complete the Purchase.*

**14. CITIZEN'S ADVISORY COMMISSION REPRESENTATIVE**

**Action:** *Approved Recommendation by the Library Commission to Appoint Charles Dillmann as Representative to the Citizen's Advisory Commission on the Santa Clara County Library.*

**15. SPECIAL CITY COUNCIL MEETING MINUTES OF MAY 9, 2000**

**Action:** *Approved the minutes as written.*

**11. ACCEPTANCE OF ADA PARKS UPGRADE PROJECT**

Mayor Pro Tempore Tate stated that he did not quite understand the nature of the project being completed but stop notice still being out on it. Therefore, he was not comfortable declaring the project complete.

Director of Public Works Ashcraft indicated that the project is competed and that what is not before the Council is a recommendation to make final payment. He indicated that some material suppliers and subcontractors have filed claims. He stated that the work has been done and the project is completed but that there are some clients who are holding funds that the contractor did not pay their set fee. He informed the City council that the City Attorney is recommending accepting the program which will expedite the finalizing of the final issues.

Mayor Kennedy and Council Member Sellers noted that this is a significant accomplishment that should be recognized. Mayor Kennedy requested that staff come up with a way to recognize the completion of this very significant project.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Cook, the City Council unanimously (5-0) **Accepted** as Complete the Construction of Morgan Hill ADA Parks Upgrade Project and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

#### **PUBLIC HEARING:**

**16.    APPLICATION: EXCEPTION TO LOSS OF BUILDING ALLOCATION  
APPLICATION: ELBA-00-04: DEL MONTE - DEL MONTE ESTATES (APN 764-20-072) - Resolution No. 5386**

Planning Manager Rowe presented the staff report. Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Council Member Chang abstaining (this parcel is located nearby a condo that she owns), **Adopted** Resolution No. 5386, Granting Exception to Loss of Building Allocation.*

**17.    APPLICATION ZONING AMENDMENT ZA-00-02: AMENDMENT TO CHAPTER  
17.50 OF THE MUNICIPAL CODE REGARDING VESTING TENTATIVE MAPS -  
Ordinance No. 1477, New Series**

Planning Manager Rowe presented the staff report.

Council Member Cook referred to page 175 of the agenda packet that states that the city "shall deny" and asked if it should it read "will deny." Acting Interim City Attorney Siegel informed the City Council that shall is a mandatory language and that it does not allow any discretion by the city.

Council Member Cook asked if it has been the city's practice to approve vesting maps concurrently with zoning amendments and prezonings (page 173, b1)? She asked why a tentative map would be approved as part of a prezoning application. She stated that she did not want to give approval of a vesting tentative map as part of prezoning as the applicant has not completed all the steps. Mr. Rowe recommended that "or prezoning of land to be processed concurrently" be deleted from the ordinance.



Council Member Cook asked if the ordinance needs to indicate which process is to be completed first? Mr. Rowe clarified that the zoning action is to occur before the approval of a vesting tentative map unless a zoning action will occur before unless it is processed concurrently with a map application.

Mayor Pro Tempore Tate noted that Mr. Oliver made some suggestions at the Planning Commission and that he was not sure whether Mr. Oliver's suggestions were incorporated in the ordinance or whether his suggestions were excluded as part of the Planning Commission discussion.

Mr. Rowe informed the City Council that the Planning Commission did not support Mr. Oliver's recommendation to refer to "conceptual" landscape plans. He indicated that staff has deleted reference to architecture.

Council Member Cook referred to page 174, item 7, Economic Analysis of the Market for the Subdivision. She asked about the thought about this and how useful is it to making a decision in this process? she asked if the City can factor this information into the decision in a vesting map? Mr. Rowe clarified that there may be a concern of where an application is to create small industrial lots and that the city may be concern that there is an ample supply of small industrial lots. Staff would take the best interest of the community and that review would be on a case by case basis.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Cook, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1477 N.S., Amending Chapter 17.50 Establishing Submittal Requirements and Conferring Vested Right provisions on Nonresidential Tentative Map Approvals.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1477, N.S. by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 17.50 OF THE MORGAN HILL MUNICIPAL CODE ESTABLISHING SUBMITTAL REQUIREMENTS AND CONFERRING VESTED RIGHT PROVISIONS ON NONRESIDENTIAL TENTATIVE MAP APPROVALS, amending page 173 B1 to delete "or rezoning of land," by the following roll call vote: AYES: Chang, Cook, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**18.    DEVELOPMENT AGREEMENT AMENDMENT APPLICATION DAA 98-11: SPRING AVE. - WELLINGTON (FORMERLY GREEN ACRES): REQUEST FOR EXCEPTION TO LOSS OF BUILDING ALLOCATION - Ordinance No. 1478, New Series**

Planning Manager Rowe presented the staff report and informed the Council that the Commission is recommending a six month extension versus the applicants request for a one year extension as it was the Planning Commissions belief that a six month extension could be justified.

Mayor Kennedy opened the public hearing. Glenn Pace informed the City Council that a letter was received from the County indicating that the property was being removed from the Williamson Act as of January 1, noting that this was an incorrect statement. He petitioned the City Council and the Council agreed to remove the property from the Williamson Act billed, agreeing to pay \$220,000. This resulted substantial delay and in the planning process. No further comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Chang and seconded by Council Member Cook, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1478, New Series, Approving the Exception to Loss of Building Allocation.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Chang, the City Council **Introduced** Ordinance No. 1478, N.S. by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING A DEVELOPMENT AGREEMENT TO PROVIDE FOR AN EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR APPLICATION MP-97-22: SPRING-MALONE/WELLINGTON (APN 767-15-006-010 by the following roll call vote: AYES: Chang, Cook, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**19.    MEASURE P APPEAL APPLICATION AP-00-02: COCHRANE - MISSION RANCH**  
**- Resolution No. 5387**

Planning Manager Rowe presented the staff report. He recommended that the City Council uphold the Planning Commission's action and deny the appeal based on the findings listed in the staff report. He recommended that the City council uphold the Planning Commission's evaluation of the project and deny the request to increase the project's score based on the findings outlined in the Council's resolution. He said that one of basis for the appeal is the unfairness of changing the methodology for scoring a project for ongoing development. The benefits that the project receives in this year's competition as a result of this change should not be acknowledged. The change would overtake the second place project and that the project would receive allotments.

Mayor Kennedy opened the public hearing.

Dick Oliver, representing Dividend Homes and the developer representing the Ruge family, stated that he disagreed with the figures presented by staff this evening (project scored 180 points in 1998, not 176 points). He said that he is not requesting a change in the allocations in difference to the work performed by the other projects. He requested a change in the point score and requested a policy statement from the City Council to staff and the planning commission stating that it is not appropriate to change the procedure such that a project's point score go down based upon similar or same level of commitments made. He also requested that the City Council consider its authority under the Measure P language of the initiative and the enabling legislative that the Council create a set aside of a minimum of 50 units per year for the Cochrane Road Assessment District (CRAD) property owners to compete under the provisions under Measure P. He presented a brief history of the CRAD property owners' association with the City (legal issues involved). He also presented the Council with a history of building permits issued and the number granted to CRAD property owners (3,219

allocations since the judgement was entered into by the city, with only 265 (8.23%) allotments being issued to CRAD properties in 16 years since the city entered into the CRAD judgement. He did not believe that this level of development over 16 years constitute a reasonable compliance with the city's obligation under the judgement. He noted that the CRAD properties have not received any special treatment under any Measure E/P hearings because of the CRAD judgement. He noted that every time CRAD properties are awarded allocations, immediately after the award, changes were made to the criteria so that projects in the CRAD areas would lose points. He felt that every time that CRAD properties receive allotments, the criteria changes and makes it difficult in successive years to score points. He reiterated his request that the Council establish a special set aside of 50 allotments for CRAD properties to compete under Measure P (geography) initiative as it does with other set asides such as has been done with affordable, micros, rentals and small projects. He indicated the categories where the project was evaluated and scored differently than it was in 1998 (e.g., schools, lot layout). He noted that a difference of one point makes a difference in receiving allocations and that a difference of five points is monumental. The most significant change made was in the area of overall site plan (lot layout). In order, to meet this concern, staff looked at the new criteria which gives staff and the commission a subjective ability to look at the overall site plan and determine whether it meets an excellent, average or below average site plan. He stated that he is willing to work with the City to make the changes that it would like to see. He met with the Development Review Committee and noted that the changes proposed by DRC staff are extensive. He identified the changes being requested as follows: the creation of a 200 foot buffer to the eastern portion of the site, adjacent to agricultural land; redesign the lot configuration; elimination of the park site and soccer field; loss of open space; increased coverage; loss of interior pathways; reduction in lot sizes; reduction in the overall lot transition; and indicated that there would be an increase in the number of lots to offset dues to the homeowners association for fence maintenance. He stated that he can make the changes but that he could lose points in other categories such as parks and paths category. He said that he is in a catch 22 on an on going project. He stated that he is not requesting a change in the allocation distribution but requested that the Council give him a commitment the project would not receive less points as long as the project does not lessen the commitments made. He also requested that the Council give consideration to a set aside for CRAD properties,

Mayor Pro Tempore Tate said that it appears that the changes anticipated to the score was not due to the change in the criteria but because the design was changed to achieve conformance with the Development Review Committee (DRC) request. It was his belief that the appeal was based on the points changing from year to year based on criteria changes. Mr. Oliver said that the criteria has changed in the sense that there are points set up in the scoring for having an excellent overall site plan. The site plan was approved five to six years ago. Now, staff is indicating that this is not a good site plan any longer and therefore, points will not be awarded. This is a change in the criteria from year to year that adversely affects the project.

Council Member Cook felt that there are several issues associated with this application. She recommended that there be discussion about the dedicated set aside issue. She asked why the Council has to set aside allotments just for CRAD? She asked why there could not be discussion about readjusting distance from the core instead? She felt that the city's interpretation of what the court stated may differ. The Court stated that the City has to allow annexation and development of the property. It was also stated that development had to occur inside of Measure P. However, the issue of timing was not addressed. She felt that this is the issue that Mr. Oliver is now facing. She said

that this issue was never answered in any of the court cases. She noted that the timing for CRAD projects are no different than any other projects in the city.

Mr. Oliver agreed that the court did not address the issue of specific timing over year. He noted that it has been 16 years since the CRAD judgement and that there are no other areas in the city that have entered into that pushes development.

Council Member Cook did not believe that it was a good precedent to give preferential treatment to CRAD properties. She stated that her main concern is the criteria of distance from the core. If changed, it would equally affects every project in the city. She noted that the Mr. Oliver cannot change the geography of his project. She recollected that the City has a water pump station located on Peet Road. It was decided that the pump was located outside of the city limits but still considered a city facility. This project received points because the property was measured from this point for some of the phases.

Mr. Oliver stated clarified that Mr. Garcia committed to install a line from the pump to loop a system. He did not receive a point for being located adjacent to the Peet Road pump station and was not used to determine project distance from the core. The project was able to use the park land as being adjacent development. He stated that the reason for the CRAD judgement was that all CRAD property owners paid for a sewer line, water line and the tank located above the Boys Ranch necessary for the Wiltron property to develop. The CRAD property owners paid for the improvements were not allowed to receive benefits from these improvements. He felt that these improvements justify special treatment.

Mr. Rowe concurred with Mr. Oliver's comments with respect to the 180 total project point score. He addressed scoring distance from the core that occurred in 1994.

Mr. Oliver stated that he would request point modifications and that he would be willing to waive the allocations this year. He also requested a policy decision to state that an on going project does not score less in the following year.

Council Member Cook said that if change in points are granted, the city would have to re-evaluate the other projects in order to be fair because you cannot treat one project different from another.

Mayor Pro Tempore Tate did not agree with Mr. Oliver's request to set aside allocations for CRAD properties and that he did not believe that the criteria has to be changed to address this request. He stated that he wanted to understand where the five points are differences from this year and last year so that the city can craft some policy for next year's competition. He did not support changing the allocation this year. However, he felt that Mr. Oliver raised realistic and valid points about changes that can occur from year to year that need to be addressed from a policy stand point. In order to address changes from a policy stand point, he needs detail in depth knowledge five point differentials.

Mr. Oliver indicated that there is only a three point difference subject to staff's correction (two points in orderly and contiguous in the overall site plan and one point in circulation of the overall site plan. There was a point not scored for the bus stop because the bus stop was installed in an earlier phase. He also lost a point in the open space coverage issue. He requested that a policy direction be given

that on an on-going project, the same points are awarded in successive years if a project has not reduced its commitments.

Council Member Chang asked if there are other on going projects that have this same occurrence? Mr. Rowe responded that there are a number of continuing project where the change in scoring methodology has affected their point score (e.g., Central Park, Coyote Estates). He noted that the changes apply to all projects equally. He said that the initiative mandates Planning Commission evaluation of the criteria annually. He stated that if the Council applies the scoring from last year, all projects should be reviewed and not just the on going projects. He indicated that the Planning Commission discussed whether there should be a set aside for on going allotments. The Commission did not support this set aside because the Measure P subcommittee has made some changes which would increase the additional point opportunities for on going development. The Commission recognizes the need to have on going projects completed. The Planning Commission is hopeful that the proposed adjustments will enhance some of the take aways that occurred due to this year's scoring changes. This project, as well as other projects in the CRAD area and other areas would be placed in a more competitive position. he felt that tweaking the points to some point where on going projects would have a competitive advantage and would not give a new project to receive allotments until all the existing projects are built out.

Acting Interim City Attorney Siegel said that at the June 7 meeting or a later date, the City Council can discuss policies. What is before the Council is the appeal and all applicants affected by Measure P would need to be provided with notice of any potential changes to the policy. He noted that the applicant is suggesting that he is not looking for allocation but that he is bringing items for Council attention and would like to get this year's points that he is entitled to for next year. He said that the Council could craft a polity that would allow Mr. Oliver to receive points that is entitle to at a later date. Denying the appeal, would not prejudice the policies the Council creates from moving forward.

Council Member Sellers appreciated Mr. Oliver brining up policy changes and the CRAD issues as they are significant issues. He felt that it was appropriate to raise these issues this evening but that he did not believe that it was necessary to address them this evening.

Council Member Cook stated that it would serve Mr. Oliver to preserve his score this evening because the project will be rescored next year.

Mr. Oliver stated that he agreed with Council Member Cook in part. He said that he would agree to make changes to the site plan but that in doing so, he may lose some points that he should not lose. He felt that it becomes unfair to an on going project to require a change the site plan based on existing utilities and residents. Maybe at the next meeting, a policy can be stated that a project that are on going, they may change as long as they do not lose the level of commitment and that the Planning Commission look favorably upon the project so that the project is not jeopardized for making the changes requested.

Council Member Cook requested that the Council discuss the agricultural buffer at the June 7 meeting as this a new concept to make the developer responsible for. She asked why this should be the developer's responsibility and not the other property owner?

Mr. Rowe informed the City Council that at the June 7 meeting, staff will be bringing before the Council Planning Commission recommendation on the changes to the evaluation criteria that will be applied to next year's competition. The Commission is recommending changes that will benefit on going projects to increase the likelihood to receive allocations year to year. Also to be discussed is the number and distribution of allocations, including set aside recommendations.

Mr. Oliver informed the City Council that he met with Mitch and Andrew Mariani and that they indicated that the family did not want to see the preserve as there would be an anticipation by the City that they would remain forever when in fact, they will want to move out of the area.

James Bonagofski, Mission Ranch resident, stated that he had an expectation on how the project would develop when he purchased his home. He was not supportive of the agricultural buffer and the redesign the entire development. He felt that it was unfair to developer to change the ground rules once the site plan has been approved and phases have been built.

Council Member Cook stated that she shares a lot of the same concerns expressed by Mr. Oliver, especially the partially completed project. She hopes that the Council will have an opportunity to explore these concerns.

No further comments being offered, the public hearing was closed.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Denied** the Appeal and Adopted Resolution No. 5387 with Findings.*

## **20.     SPECIAL EVENT PERMITS AND FEES - Resolution No. 5383**

Environmental Programs Manager Eulo presented the staff report and clarified the two-tier permit structure.

Mayor Pro Tempore felt that non-profits do not generate a lot of revenue in their fund raising activities and that \$100 may be a high fee. He would support \$25-50 as a tier 1 fee.

Mayor Kennedy inquired as to the reason for the \$100-tier 1 fee. Mr. Eulo said that the fee was based on staff time associated with the evaluation of the proposal. However, the Council can chose to change this fee.

Council Member Sellers recommended that fees be eliminated for small events or that the fee be reduced to a smaller amount (e.g., \$25-\$50).

Mayor Kennedy suggested that the tier 1 fee be reduced to \$50 and that a criteria be established to reduce the amount of staff time that it takes to review certain permits. He stated that non profits provide good community services/events and that they should be encouraged. He further recommended that the fee be reassessed and charged accordingly next year.

Mayor Kennedy opened the public hearing.

Pete Zsiga asked what triggers the new tier level? He noted that a car wash on church property would make the youth liable for this fee. He indicated that the seniors conduct a rummage sale in the senior center and asked if this temporary use would require a fee? He recommended that fees be paid for major events.

Interim City Manager Tewes said that it is not staff's intention to change the circumstances in which a permit is required as it is established in the municipal code. Under discussion is a proposal to reduce the fees for these circumstances.

No further comments being offered, the public hearing was closed.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5383, Establishing a Two-tiered Rate Schedule for Temporary Use Permits, amending the Tier 1 fee to \$50.*

**21.     ANNUAL ADJUSTMENT TO REFUSE RATES - Resolution No. 5388**

Environmental Programs Manager Eulo presented the staff report. Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Cook and seconded by Council Member Chang, the City Council unanimously (5-0) **Adopted** Resolution No. 5388 Approving the Refuse Rate Adjustment.*

**OTHER BUSINESS: (continued)**

**22.     ADOPT RESOLUTIONS OF NECESSITY FOR PROPERTY ACQUISITION OF PROPOSED BUTTERFIELD EXTENSION - Resolution Nos. 5384 and 5385**

Director of Public Works Ashcraft presented the staff report. He indicated that John Telfer represents the two property owners and that he has indicated that the property owners do not object to the proceedings this evening as this preserves their right to seek due compensation and that they do not want to delay the process. He recommended approval of two resolutions and that the Council authorize expenditure of \$263,200 into an escrow fund to be placed into escrow in anticipation of purchase of the properties. He recited the findings contained in the two resolutions. He informed the City Council that based on the 15 day notice to the property owners, it did not require a public hearing. However, the City Council can accept public testimony.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:**        *On a motion by Council Member Cook and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0): 1) **Adopted** Resolution No. 5384 determining that public interest and necessity require the acquisition of certain real property (Lands of Cox, APN 726-26-001) and directing the filing of eminent domain proceedings; 2) **Adopted** Resolution No. 5385, determining that public interest and*

*necessity require the acquisition of certain real property (Lands of Hu, APN 726-26-003) and directing the filing of eminent domain proceedings; and 3) approved the expenditure of \$263,200 plus escrow and closing costs for the acquisition of the two properties.*

**23. REVIEW OF PROPOSED MITIGATED NEGATIVE DECLARATION FOR THE MODERNIZATION OF LIVE OAK HIGH SCHOOL**

Director of Community Development Bischoff presented the staff report.

Council Member Cook asked if staff investigated whether an increase in stadium seating of 700 seats (current 1800 and new 2500 seats) would impact traffic? Mr. Bischoff stated that staff would request that this issue be addressed as it was not addressed as part of the DRC review.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:** *On a motion by Council Member Cook and seconded by Council Member Sellers, the City Council unanimously (5-0) **Directed** Staff to Respond to the Proposed Negative Declaration Requesting Additional Traffic Analysis. Staff to review any additional traffic impacts associated with the increased stadium seating.*

**SECOND READING OF ORDINANCE:**

**24. ADOPT ORDINANCE NO. 1476, NEW SERIES**

**Action:** On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council adopted Ordinance No. 1476, New Series as follows:

**ORDINANCE NO. 1476, New Series** – *An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 545, New Series Amending the Development Plan for the Planned Unit Development Located on the South Side of Cochrane Road Between Monterey Road and Highway 101. ZA 00-03: Cochrane Rd - Morgan Hill Development Partners (APN 726-32-015) by the following roll call vote: AYES: Chang, Cook, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**CLOSED SESSION:**

Acting Interim City Attorney/Agency Counsel Siegel announced the following closed session items:

**1.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION**

Legal Authority:	Government Code 54956.8 & 54956.9(c) (1potential case)
Real Property(ies) involved:	APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Mission View and Cochrane Road; and APN 728-31-009 - 12.88



City Negotiators: acres located on the southeast corner of Cochrane and Highway 101  
(St. Louise Hospital property)  
Agency Members; Interim Executive Director; Interim Agency  
Counsel; and F. Gale Conner, special counsel

**2.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Initiation of litigation pursuant to Government Code section 54956.9(c) - One (1) potential case

**3.**

**CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATIONS**

Legal Authority: Government Code Section 54956.8  
Real property involved: 2.93 and 2.03 acre parcels located on the west side of Monterey Road,  
north of Cosmo Avenue (APN 767-17-046 & 047)  
City/Agency Negotiators: Interim City Manager/Interim Executive Director; Interim City  
Attorney/Agency Counsel; Director of Business Assistance & Housing  
Services; Recreation Manager  
Closed Session Topic: Acquisition of Real Property

**4.**

**CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATIONS**

Legal Authority: Government Code Section 54956.8  
Real property involved: A 8.93 acre parcel located on West Edmundson Avenue, east of  
Community Park (APN 767-18-025)  
City/Agency Negotiators: Interim City Manager/Interim Executive Director; Interim City  
Attorney/Agency Counsel; Director of Business Assistance & Housing  
Services; Recreation Manager  
Closed Session Topic: Acquisition of Real Property

**PUBLIC COMMENTS**

Chairman/Mayor Kennedy opened the closed session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Chairman/Mayor Kennedy adjourned the meeting to closed session at 10:22 p.m.

**RECONVENE FROM CLOSED SESSION**

Chairman/Mayor Kennedy reconvened the meeting at 12:17 a.m.

**CLOSED SESSION ANNOUNCEMENT:**

Acting Interim Agency Counsel/City Attorney Siegel announced that no reportable action was taken on the above listed closed session item.

**ADJOURNMENT:** There being no further business, Chairman/Mayor Kennedy adjourned the special and regular meeting at 12:18 a.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, Agency Secretary/City Clerk**